

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
EDGARDO DIAZ,

Plaintiff,

-v.-

NEW YORK PAVING INC.,

Defendant.  
-----X

ORDER

: 18 Civ. 4910 (ALC) (GWG)

GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE

For the reasons stated on the record at an oral argument held today, the application to preclude the defendant's use of the Memorandum of Agreement ("MOA") (or any documents relating to the negotiation of that agreement) (Docket # 320) is granted in part and denied in part. See Fed. R. Civ. P. 37(c)(1)(C); Fed. R. Civ. P. 37(b)(2)(A)(ii).

In brief, the application is granted with respect to the MOA, drafts of the MOA, and any other documents relating to the negotiation of the MOA to the extent such documents are offered to prove the existence of any practices by defendant preceding the MOA's effective date of March 1, 2024. The application is denied with respect to any other use the defendant may wish to make using the MOA once it came into effect (i.e., after March 1, 2024).

Finally, the Court reiterates a point it made at oral argument: the Court is of the view that the MOA would be inadmissible hearsay if it were offered to prove the existence of any practices preceding the MOA's effective date of March 1, 2024. Thus, it may be that the instant order of preclusion is of no practical consequence.

The Court has not set a schedule for the defendants' proposed motions because plaintiffs have stated they wish to consider whether they will seek any further discovery to the extent their motion for preclusion was denied. If a letter proposing a schedule for the motion has not been filed by July 16, 2024, the parties shall file a status letter by that date.

SO ORDERED.

Dated: July 9, 2024  
New York, New York

  
\_\_\_\_\_  
GABRIEL W. GORENSTEIN  
United States Magistrate Judge